LGB Engineering Sdn Bhd v Saiful Rais bin Shaiks Salim & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D3-22–553 OF 2008
AZIZAH NAWAWI J
30 SEPTEMBER 2014

Civil Procedure — Appeal — Appeal against decision of Deputy Registrar — Dispute arose from option agreement — Delay in completing option agreement — Application for specific performance of option agreement — Whether plaintiff proved fact and amount of damages suffered as result of delay by to honour option agreement

There were two appeals against the decision of the Deputy Registrar ('the DR') with regards to his findings of the assessment of damages. The DR made the orders that the plaintiff be awarded damages in the sum of RM75.53m by the defendants; and cost of the assessment of the damages proceedings of RM30,000 be paid by the defendants to the plaintiff. Pursuant to an option agreement ('the OA') entered between the plaintiff and the defendants, it was agreed, inter alia, that in consideration of the sum of RM4.5m paid by the plaintiff to the first and second defendants, the first and second defendants agreed to grant to the plaintiff the option to purchase a specified number of shares in the third defendant in the manner and within the period stated. Despite the plaintiff's election to exercise the option to purchase the shares option, the defendants delayed in completing the OA. As such, the plaintiff sued the defendants for specific performance of the OA. The High Court ordered that the OA be specifically performed and carried into execution, in that, the original share certificates of 5,000 ordinary shares of RM1 each in the capital of the third defendant ('the shares') which represent 50% of its issued and paid up capital of the third defendant held by the first and second defendants be delivered to the plaintiff. The court also ordered that the plaintiff was entitled to damages to be assessed by the senior assistant registrar and paid by the defendants to the plaintiff. The third defendant's only asset was the sum of RM4.5 million in respect of the paid-up and issued shares it own in Titisan Modal (M) Sdn Bhd ('Titisan Modal') which at the date of the judgment amounted to 45% of the total paid-up and issued shares of Titisan Modal. During an extraordinary general meeting ('the EGM') of Titisan Modal, a resolution to increase the paid-up capital of Titisan Modal was approved. 39,050,000 new ordinary shares in Titisan Modal was issued to its parent company, KPSB. In another suit, the third defendant sued Titisan Modal and KPSB over the said allotment. The court granted an interim injunction to restrain KPSB and Titisan Modal from putting into effect the resolutions

passed during the EGM for the increase in the paid-up capital. The court recorded an undertaking given by both KPSB and Titisan Modal not to facilitate the sale, not to sell, dispose, transfer the 39,050,000 new ordinary shares of Titisan Modal allotted and issued to KPSB until the hearing of the matter. The suit filed by the third defendant against Titisan Modal and KPSB was dismissed with cost and the undertakings given by both Titisan Modal and KPSB on the 39,050,000 shares were discharged. As such, the third defendant maintained its 4,500,000 shares in Titisan Modal, whereas KPSB holds 44,550,000 shares in Titisan Modal. With only 4,500,000 shares in Titisan Modal, the third defendant's share in Titisan Modal have been diluted from 45% to 9.17%.

Held, allowing both appeals:

(1) In the proceedings before the DR, the plaintiff bore the burden of proving both the fact and the amount of damages suffered as a result of the delay by the defendants to honour the OA. If the plaintiff fails to prove both the fact and the amount of damages, his claim will fail. If he proves the damage but not the amount, he may be entitled to nominal damages only. The plaintiff failed to prove both the fact and the amount of damages on the balance of probabilities. As such, the decision of the DR cannot be supported in law and on the evidence before him (see para 19).

(2) The assessment of damages was pertaining to the loss by the plaintiff, if any, due to the failure of the defendants to comply with the terms of the OA namely the delay in transferring the shares in the third defendant to the plaintiff (see para 21).

(3) The dilution of the third defendant's share in Titisan Modal was due to the increase in the share capital of Titisan Modal, which was within the management prerogative of Titisan Modal itself. The third defendant cannot be held liable for the resolution taken by Titisan Modal to increase its share capital. The defendants tried to challenge the same in the courts but failed to do so. As such, the dilution resulting from the increase in the share capital of Titisan Modal cannot be said to be the natural consequence of the delay or failure to perform the OA or that which the parties knew, when they made the contract, to be likely to result from the breach of it (see para 24).

(4) Even if the OA had materialised without any delay, once Titisan Modal has decided to increase its share capital, the new allotted shares were not freebies. If the third defendant was to maintain its 45% shareholding in Titisan Modal, it must inject a sum in proportion to its shareholding (see para 26).

[Bahasa Malaysia summary

Terdapat dua rayuan terhadap keputusan timbalan pendaftar ('TP') berkenaan dapatan beliau terhadap taksiran ganti rugi. TP telah memerintahkan agar plaintif diawardkan dengan ganti rugi berjumlah RM75.53 juta oleh defendan-defendan; dan kos taksiran ganti rugi prosiding sebanyak RM30,000 dibayar oleh defendan kepada plaintif. Berikutan satu perjanjian opsyen ('OA') yang dimasuki antara plaintif dengan defendan-defendan, dipersetujui, antara lain, bahawa sebagai balasan kepada jumlah RM4.5 juta yang dibayar oleh plaintif kepada defendan pertama dan kedua, defendan pertama dan kedua telah bersetuju untuk memberikan plaintif pilihan untuk membeli beberapa syer dalam defendan ketiga dengan cara dan dalam masa yang ditetapkan. Walaupun plaintif memilih untuk menjalankan opsyen untuk membeli syer-syer opsyen, defendan lewat dalam melengkapkan OA tersebut. Dengan itu, plaintif menyaman defendan-defendan bagi pelaksanaan spesifik OA. Mahkamah Tinggi memerintahkan agar OA dilaksanakan secara spesifik dan menjalankan pelaksanaan, dalam mana, sijil syer-syer asal sebanyak 5,000 syer biasa yang masing-masing bernilai RM1 dalam modal defendan ketiga ('syer-syer tersebut') yang mewakili 50% daripada modal yang telah dikeluarkan atau dibayar kepada defendan ketiga yang dipegang oleh defendan pertama dan kedua diserahkan kepada plaintif. Mahkamah juga memerintahkan bahawa plaintif berhak ke atas ganti rugi yang ditaksir oleh penolong kanan pendaftar dan dibayar oleh defendan-defendan kepada plaintif. Satu-satunya aset defendan adalah jumlah RM4.5 juta bagi syer-syer yang telah dibayar dan mengeluarkan syer-syer yang dimiliki olehnya dalam Titisan Modal (M) Sdn Bhd ('Titisan Modal') yang mana pada tarikh penghakiman terjumlah kepada 45% jumlah total dan mengeluarkan syer-syer Titisan Modal. Semasa mesyuarat agung luar biasa ('EGM') Titisan Modal, satu resolusi untuk meningkatkan modal berbayar Titisan Modal diluluskan. 39,050,00 syer biasa yang baharu dalam Titisan Modal dikeluarkan kepada syarikat induk, KPSB. Dalam satu lagi guaman, defendan ketiga menyaman Titisan Modal dan KPSB bagi pembahagian tersebut. Mahkamah memberikan injunksi interim untuk menghalang KPSB dan Titisan Modal daripada melaksanakan resolusi-resolusi yang dibenarkan semasa EGM bagi peningkatan dalam modal berbayar. Mahkamah merekodkan akujanji yang diberikan oleh kedua-dua KPSB dan Titisan Modal untuk tidak memberi bantuan untuk menjual, tidak menjual, memindahkan 39,050,000 syer-syer biasa yang baharu Titisan Modal yang telah dibahagikan dan mengeluarkannya kepada KPSB sehingga perbicaraan hal perkara tersebut. Guaman yang difailkan oleh defendan ketiga terhadap Titisan Modal dan KPSB ditolak dengan kos dan akujanji-akujanji yang diberikan oleh kedua-dua Titisan Modal dan KPSB ke atas 39,050,000 syer diepaskan. Dengan itu, defendan mengekalkan 4,500,000 syer dalam Titisan Modal manakala KPSB memegang 44,550,000 syer dalam Titisan Modal. Dengan hanya 4,500,000 syer dalam

Titisan Modal, syer defendan ketiga dalam Titisan Modal berkurangan daripada 45% kepada 9.17%. A

Diputuskan, membenarkan kedua-dua rayuan:

(1) Dalam prosiding di hadapan DR, plaintif mempunyai beban untuk membuktikan kedua-dua fakta dan jumlah kerugian yang dialami akibat kelewatan defendan-defendan untuk melaksanakan OA. Sekiranya plaintif gagal membuktikan kedua-dua fakta dan jumlah kerugian, tuntutannya akan gagal. Sekiranya dia membuktikan kerugian tetapi bukan jumlahnya, dia mungkin berhak ke atas ganti rugi nominal sahaja. Plaintif gagal membuktikan kedua-dua fakta dan jumlah kerugian atas imbangan kebarangkalian. Dengan itu, keputusan DR tidak boleh disokong di bawah undang-undang dan berdasarkan keterangan di hadapannya (lihat perenggan 19). B C

(2) Taksiran kerugian adalah berkenaan kerugian plaintif, sekiranya ada, akibat kegagalan defendan-defendan mematuhi terma-terma OA, khasnya kelewatan menyerahkan syer-syer dalam defendan ketiga kepada plaintif (lihat perenggan 21). D

(3) Pengurangan syer defendan ketiga dalam Titisan Modal adalah akibat peningkatan modal syer Titisan Modal, yang mana dengan sendirinya berada dalam prerogatif Titisan Modal. Defendan ketiga tidak boleh dikatakan bertanggungan bagi resolusi yang diambil oleh Titisan Modal untuk meningkatkan modal syernya. Defendan-defendan cuba untuk mencabar yang sama di mahkamah tetapi gagal berbuat sedemikian. Oleh itu, pengurangan akibat peningkatan dalam modal syer tidak boleh dikatakan sebagai akibat semulajadi kelewatan atau kegagalan untuk melaksanakan OA atau yang mana pihak-pihak ketahui semasa mereka berkontrak, akan mungkin terjadi kerana pelanggaran. (lihat perenggan 24) E F G

(4) Jika pun OA terbentuk tanpa sebarang kelewatan, apabila Titisan Modal memutuskan untuk meningkatkan modal syernya, syer-syer baharu yang dibahagikan tersebut bukanlah hadiah percuma. Sekiranya defendan ketiga hendak mengekalkan pegangan syer 45% dalam Titisan Modal, ia mestilah memasukkan jumlah yang berpadanan dengan pegangan syernya. (lihat perenggan 26)] H

Notes

For cases on appeal against decision of deputy registrar, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 812–815. I

Cases referred to

Malaysian Rubber Development Corp Bhd v Glove Seal Sdn Bhd [1994] 3 MLJ 569, SC (refd)

A *Popular Industries Ltd v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 1 CLJ 133, HC (refd)
Quah Ban Poh v Dragon Garden Pte Ltd [1985] 2 MLJ 159 (refd)
Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd [1994] 3 MLJ 777; [1995] 1 CLJ 15, FC (refd)
B *Voo Nyuk Fah @ Peter & Anor v Lam Yat Kheong & Anor* [2012] MLJU 159; [2012] 5 CLJ 229, CA (refd)
Ong Seok Heng v Wee Cheong Motor & Housing Developer Sdn Bhd [1990] 2 CLJ Rep 569, HC (refd)
Dato' Ramesh a/l Rajaratnam v Zaleha bt Abd Rahman & ors [2014] 6 MLJ 651,
C CA (refd)

Legislation referred to

Specific Relief Act 1950 s 18(3)
Contracts Act 1950 s 74

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S Bhuvaneswary (Izral Partnership) for the plaintiff.
Alex Chang (Lim Soo Lee and Shaikh Harun Mustafa with him) (Shaikh Harun & Co) for the first and second defendant.
Tina Ann Francis (Mathews Hun Lachimanan) for the third defendant.

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Azizah Nawawi J:

APPEALS

F **[1]** There are two appeals before me; both appeals are against the decision of the learned deputy registrar ('the DR') with regards to his findings of the assessment of damages. The learned DR made the following orders:

(a) that the plaintiff be awarded damages in the sum of RM74,530,000 (RM75.53 m) by the defendants; and

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(b) cost of the assessment of the damages proceedings of RM30,000 be paid by the defendants to the plaintiff.

[2] Enclosure (188) is an appeal by the first and second defendants, whilst
H encl (189) is an appeal filed by the third defendant ('the company').

THE SALIENT FACTS

[3] Pursuant to an option agreement dated 25 April 2006 ('the option
I agreement') entered between the plaintiff and the defendants, it was agreed amongst others that in consideration of the sum of RM4.5m paid by the plaintiff to the first and second defendants, first and second defendants have agreed to grant the plaintiff the option to purchase a specified number of shares in the third defendant in the manner and within the period stated therein.

[4] Despite the plaintiff's election to exercise the option to purchase the shares option on 31 October 2008, the defendants delayed in completing the option agreement. As such, the plaintiff sued the defendants for specific performance of the option agreement.

[5] Pursuant to the judgment of the High Court dated 27 January 2012, it was ordered that the option agreement be specifically performed and carried into execution, in that, the original share certificates of 5,000 ordinary shares of RM1 each in the capital of the third defendant ('the shares') which represent 50% of its issued and paid up capital of the third defendant held by the first and second defendants be delivered to the plaintiff. The court also ordered that the plaintiff is entitled to damages to be assessed by the senior assistant registrar and paid by the defendants to the plaintiff.

[6] The third defendant's only asset is the sum of RM4.5 m in respect of the paid-up and issued shares it own in Titisan Modal (M) Sdn Bhd ('Titisan Modal') which at the date of the judgment amounted to 45% of the total paid-up and issued shares of Titisan Modal.

[7] Titisan Modal is a subsidiary of Kumpulan Perangsang Selangor Sdn Bhd ('KPSB').

[8] On 8 July 2011, during an extraordinary general meeting ('the EGM') of Titisan Modal, a resolution to increase the paid-up capital of Titisan Modal was approved. 39,050,000 new ordinary shares in Titisan Modal was issued to its parent company, KPSB on 1 August 2011.

[9] In suit No 22NCC-1253 of 2011, the third defendant, Operasi Murni sued Titisan Modal and KPSB over the said allotment. On 3 August 2011, the court granted an interim injunction to restrain KPSB and Titisan Modal from putting into effect the resolutions passed during the EGM held on 8 July 2011 for the increase in the paid-up capital.

[10] On 24 August 2011, (suit No 22NCC-1253 of 2011) the court recorded an undertaking given by both KPSB and Titisan Modal not to facilitate the sale, not to sell, dispose, transfer the 39,050,000 new ordinary shares of Titisan Modal allotted and issued to KPSB on 1 August 2011 until the hearing of the matter.

[11] On 23 May 2012, the suit No 22NCC-1253 of 2011 filed by the third defendant, Operasi Murni against Titisan Modal and KPSB was dismissed with cost and the undertakings given by both Titisan Modal and KPSB on the 39,050,000 shares are discharged. As such, the third defendant maintained its 4,500,000 shares in Titisan Modal, whereas KPSB holds 44,550,000 shares in

Titisan Modal. With only 4,500,00 shares in Titisan Modal, the third defendant's share in Titisan Modal have been diluted from 45% to 9.17%.

THE SETTLED LAW ON ASSESSMENT OF DAMAGES

[12] It is trite law that the plaintiff bears the burden of proving its damages. In order for the plaintiff to be able to claim damages, the plaintiff must prove the damage and it is not enough to merely write down the particulars and rely on the same. In *Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777; [1995] 1 CLJ 15, the Federal Court held as follows:

> Before we embark upon a detailed consideration of the specific issues which arise for decision, there are three preliminary matters which, at the outset, require emphasis. *Firstly, that part of the judgment which provides that the vendor shall pay to the purchaser damages to be assessed for wrongful termination of the agreement with costs and that Tan Sri Khoo and the vendor shall pay to the purchaser damages to be assessed for breaches of the undertakings, even though affirmed on appeal, can in no way relieve the purchaser of satisfying the fundamental requirement of having to prove its loss (if any) arising from those breaches. To hold otherwise would amount to dispensing with proof of quantum altogether, and that cannot be the law. In so saying, we reminded of the words of Lord Goddard in Bonham - Carter v Hyde Park Hotel Ltd 64 TLR 177* at p 178:
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> > *Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages; it is not enough to write down the particulars, so to speak, throw them at the head of the court, saying: 'this is what I have lost, I ask you to give me these damages' They have to prove it.*

[13] In *Popular Industries Ltd v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 1 CLJ 133, the court held at p 367(MJ):

> *It is axiomatic that a plaintiff seeking substantial damages has the burden of proving both the fact and the amount of damages before he can recover. If he proves neither, the action will fail or he may be awarded only nominal damages upon of the contravention of a right. Thus nominal damages may be awarded in all cases of breach of contract (see Marzetti v Williams 109 ER 842*). *And, where damage is shown but its amount is not proved sufficiently or at all, the court will usually decree nominal damages*. See, for example *Dixon v Deveridge* (1825) 2 C & P 109 172 ER 50 and *Twyman v Knowles* 138 ER 1183.

[14] The plaintiff's claim against the defendants is for the specific performance of the option agreement dated 25 April 2006. After the completion of the trial, judgment was entered against the defendants on 27 January 2012, and the court ordered the specific performance of the option agreement and damages to be assessed by the DR. It is not very clear if the claim for damages is made pursuant to s 18(3) of the Specific Relief Act 1950 ('the SRA 1950'). However, in *Tan Sri Khoo Teck Puat & Anor* (supra), Justice Edgar Joseph Jr FCJ made the following observation:

> It is undisputed, and indeed it was common ground, that in law, in appropriate circumstances, compensation may be awarded against a vendor in addition to specific performance, (see s 18 of the SRA 1950) ...

[15] In *Quah Ban Poh v Dragon Garden Pte Ltd* [1985] 2 MLJ 159, the High Court had granted the plaintiffs application for specific performance of a sale and purchase agreement of a house. In addition to that, the court also awarded damages for incomplete work and defects in the said house under s 18(3) of the SRA 1950.

[16] In *Ong Seok Heng v Wee Cheong Motor & Housing Developer Sdn Bhd* [1990] 2 CLJ Rep 569, the High Court held that the basis of assessment of compensation under s 18(3) of the SRA 1950 is similar to the assessment of damages under s 74 of the Contracts Act 1950 .

[17] With regards to s 74 of the Contracts Act 1950, in *Malaysian Rubber Development Corp Bhd v Glove Seal Sdn Bhd* [1994] 3 MLJ 569 (SC), it was held by Mohamed Dzaiddin SCJ at p 575/b-e:

> In considering the above question, it is important to bear in mind that the normal measure of damages for breach of contract in this country is prescribed by s 74(1) of the Contracts Act 1950, which is the statutory enunciation of *Hadley v Baxendale* (1854) 9 Ex 341 (*Teoh Kee Keong v Tambun Mining Co Ltd* [1968] 1 MLJ 39; *Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perkayuan Sdn Bhd & Ors* [1993] 2 MLJ 76, (SC). In essence, the section states that the party *may recover any loss or damage for any breach which:* (a) *naturally arose in the usual course of things*; or (b) which the *parties knew*, when they made the contract, to be *likely to result from the breach of it*. For the sake of completeness, it should be mentioned that our courts have treated the position under the second limb of the section to be similar to the second limb of Hadley v Baxendale, which is, *the party may recover damages which may 'reasonably be supposed to have been in contemplation of both the parties, at the time they made the contract* (Emphasis added)

[18] In *Voo Nyuk Fah @ Peter & Anor v Lam Yat Kheong & Anor* [2012] MLJU 159; [2012] 5 CLJ 229, the court held as follows:

> It is trite law that the task of accounts and assessment of damages is an exercise of judicial discretion. Such discretion is based is a judicial one, as it is not exercised based on whims and fancies, but be reference, guidance and application of established judicial principles and of course having regard to all the facts and evidence adduced before the officer or the judge who undertakes the assessment.

THE FINDINGS OF THE COURT

[19] Premised on the settled principles above, I am of the considered opinion that in the proceedings before the DR the plaintiff bears the burden of proving both the fact and the amount of damages suffered as a result of the delay by the

defendants to honour the option agreement. If the plaintiff fails to prove both the fact and the amount of damages, his claim will fail. If he proves the damage but not the amount, he may be entitled to nominal damages only.

[20] In their written submission dated 19 February 2014, the plaintiff submits in para 6(b) as follows:

> (b) by virtue of the defendants' failure to honour their obligation pursuant to the option agreement, the plaintiff is entitled to damages to be assessed by the Senior Assistant Registrar and paid by the defendants to the plaintiff.

[21] I am therefore of the considered opinion that that the assessment of damages is pertaining to the loss by the plaintiff, if any, due to the failure of the defendants to comply with the terms of the option agreement, namely the delay in transferring the shares in the third defendant to the plaintiff.

[22] It is the submission of the defendants that the plaintiff has failed to adduce any evidence to prove that the plaintiff suffered loss of RM74.53m as a result of the delay in the transfer of the 5,000 shares in third defendant to the plaintiff.

[23] The plaintiff however contended that they have suffered loss and damages due to the defendants' delay in completing the option agreement. The plaintiff submits that the option agreement is to benefit the third defendant's 45% share in Titisan Modal (M) Sdn Bhd. The plaintiff says that by reason of the increase of paid-up capital in Titisan Modal and the non-subscription of allotted shares by the third defendant in Titisan Modal, the plaintiff did not received what they had bargained for in terms of value in the third defendant as the third defendant's shareholding in Titisan Modal has been reduced from 45% to 9.17%. The plaintiff submits that it is this loss and damage suffered by the plaintiff that was assessed by the learned registrar.

[24] I am of the considered opinion that the dilution of the third defendant's share in Titisan Modal is due to the increase in the share capital of Titisan Modal, which is within the management prerogative of Titisan Modal itself. The third defendant cannot be held liable for the resolution taken by Titisan Modal to increase its share capital. Indeed the defendants tried to challenge the same in the courts but failed to do so. As such, I am of the considered opinion that the *dilution resulting from the increase in the share capital of Titisan Modal cannot be said to be the natural consequence of the delay or failure to perform the option agreement or that which the parties knew, when they made the contract, to be likely to result from the breach of it.* (see *Malaysian Rubber Development Corp Bhd*). Indeed in the case of *Dato' Ramesh a/l Rajaratnam v Zaleha bt Abd Rahman & ors* [2014] 6 MLJ 651 , in an appeal against the findings of the senior assistant registrar in an assessment of damages, which was affirmed by

the High Court, the Court of Appeal held that the first defendant's claim for damages for loss of reputation arising from a mareva injunction was too remote in terms of causation to be recoverable.

[25] In para (6) (see second paragraph at p 4) of his grounds for award of damages, the learned DR held as follows:

> 6. If the option agreement would have gone through or had materialised without any delay by the defendants, the plaintiff would have benefitted from the third defendant's substantial asset of 45% shareholding in Titisan Modal (M) Sdn Bhd since 2008 based on the plaintiff's ascribed value of shares then. Due to the defendant's failure to perform its obligation, the plaintiff has suffered losses which he could have gotten based on the ascribed value of the shares ...

[26] I fail to appreciate how the delay in implementing the transfer of the shares resulted in the plaintiff's suffering losses. Even if the option agreement had materialised without any delay, once Titisan Modal has decided to increase its share capital, the new allotted shares are not freebies. I am of the considered opinion that if the third defendant is to maintain its 45% shareholding in Titisan Modal, it must inject a sum in proportion to its shareholding.

[27] Therefore, the plaintiff must show that it is in a position to inject the equivalent sum into the third defendant company in order to enable the third defendant to subscribe the new shares and maintain its 45% shareholding in Titisan Modal. The plaintiff has failed to show that it has the capital to inject the equivalent sum in order to enable the third defendant to maintain its 45% shareholding in Titisan Modal. Premised on the plaintiff's calculations itself, the plaintiff would have to inject RM731.45m in order to enable the third defendant to maintain its 45% shareholding in Titisan Modal.

[28] Further, even if we calculate the value of the reduced 9.17% shares in Titisan Modal, and premised on the plaintiff's calculation, the shares of the third defendant in Titisan Modal is worth about RM187.2m. That is worth much more than the RM4.5m paid by the plaintiff under the option agreement. As such, there is no loss suffered by the plaintiff.

[29] I find that premised on the evidence adduced, the plaintiff has failed to prove both the fact and the amount of damages on the balance of probabilities. As such, the decision of the learned DR cannot be supported in law and on the evidence before him. I hereby allow both appeals and set aside the order of the learned DR with costs to the defendants.

A *Both appeals allowed with costs.*

Reported by Afiq Mohamad Noor

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